

Pacific Ascorp and Southern California District Council of Laborers, affiliated with Laborers' International Union of North America, AFL-CIO and Plaster Tenders, Construction and General Laborers, Locals 300 and 802, Parties to the Contract. Case 31-CA-18238

October 25, 1991

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On February 28, 1991, the National Labor Relations Board issued a Decision and Order in this proceeding,¹ in which it, inter alia, ordered the Respondent to make whole unit employees by making payments to various fringe benefit funds as provided by the collective-bargaining agreements until their expiration. A controversy having arisen over the amounts due under the terms of the Board's Order, the Acting Regional Director for Region 31 issued a compliance specification and notice of hearing on June 21, 1991. Although properly served with a copy of the compliance specification, the Respondent has failed to file an answer.²

On September 3, 1991, the General Counsel filed with the Board a Motion for Summary Judgment on

¹ 301 NLRB No. 156 (not reported in Board Volume).

² Counsel for the General Counsel, in a letter to the Respondent dated August 13, 1991, again notified the Respondent of its obligation to file an answer to the compliance specification and enclosed a copy of Sec. 102.56 of the Board's Rules and Regulations. Counsel's letter further notified the Respondent that she intended to file a Motion for Summary Judgment if an answer were not filed by August 23, 1991. On August 14, 1991, the Respondent's attorney acknowledged receipt of the compliance specification, noted that the Respondent filed a chapter 7 petition on about August 28, 1990, and stated that the proceedings violated the automatic stay provisions of the Bankruptcy Code. On August 19, 1991, counsel for the General Counsel left a detailed message with a representative of the Respondent's attorney advising that the Respondent was obligated to file an answer notwithstanding the bankruptcy proceedings and that she intended to file a Motion for Summary Judgment if an answer was not received by August 23, 1991. To date, no answer has been filed.

The Respondent's bankruptcy proceedings do not deprive the Board of jurisdiction or authority to entertain and process the unfair labor practice case to its final disposition. *Schaffner Construction Co.*, 252 NLRB 967, 968 (1980).

Compliance Specification. On September 5, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56 of the Board's Rules and Regulations provides that if an answer is not filed within 21 days from the service of the compliance specification, the Board may find the allegations of the specification to be true and enter an appropriate order. According to the uncontroverted allegations in the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net amounts due are as stated in the compliance specification and we will order payment by the Respondent to the fringe benefit funds listed below on behalf of the unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, Pacific Ascorp, Inglewood, California, its officers, agents, successors, and assigns, shall make whole the affected unit employees by payment to the fringe benefit funds listed below the following amounts, plus any additional amounts necessary (see *Merryweather Optical Co.*, 240 NLRB 1213 (1979)):

Health and Welfare	\$84,030.09
Pension	22,189.41
Education (LECET)	1,937.60
Vacation	43,890.22
Training Fund	5,819.44